

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49820; File No. SR-BSE-2004-21)

June 7, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Boston Options Exchange Regulation By-Laws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 18, 2004, the Boston Stock Exchange, Incorporated (“BSE” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the Boston Options Exchange Regulation LLC By-Laws relating to the separation of duties between the BSE’s Chairman and Chief Executive Officer. Proposed new language is in italics; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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RULES OF THE BOSTON STOCK EXCHANGE

BOSTON OPTIONS EXCHANGE REGULATION LLC BY-LAWS

Secs. 1-2 no change

Sec. 3

Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. In accordance with Section 4, below, the [Chief Executive Officer] Chairman of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Sec. 4

Qualifications

Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include the [Chief Executive Officer] Chairman of the BSE, who will not be

considered for the purposes of determining the qualification percentages for the Board set forth herein. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Secs. 5 – 13 no change

Sec. 14

Committees

(a) – (c) no change

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant

Director. The [Chief Executive Officer] Chairman of the BSE shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to amend certain sections of the Boston Options Exchange Regulation LLC ("BOXR") By-Laws concerning the position of the BSE Chief Executive Officer, in light of recent changes to the BSE Constitution providing for the separation of the Chairman and Chief Executive Officer roles.

On April 23, 2004, the Commission approved SR-BSE-2004-10, and Amendment No. 1 thereto.³ That rule change permits the BSE Board of Governors to separate the positions of

³ See Securities Exchange Act Release No. 49611, 69 FR 23833 (April 30, 2004).

Exchange Chairman and Chief Executive Officer. The separation allows for the independence of the Exchange's regulatory function from its marketplace function. In particular, the Exchange's Constitution sets forth that the Chairman would, among other duties, be responsible for the management of the regulatory affairs of all exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party. The Chief Executive Officer's duties would primarily be limited to responsibilities for the management and administration of the Exchange's marketplace functions, and would not include any involvement in the Exchange's regulatory affairs, including the regulatory affairs of any exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party.

At the time the BOXR By-Laws were drafted, the Exchange's Chairman and Chief Regulatory Officer were the same person, as the Exchange's Constitution then mandated. Since the positions have since been separated, in accordance with recent BSE Constitutional changes, the Exchange is now seeking to replace "Chief Executive Officer" with "Chairman" in the BOXR By-Laws. This change would not only be consistent with the current changes to the BSE Constitution but with the purpose of BOXR, as a subsidiary of the Exchange responsible for regulatory oversight of the Boston Options Exchange, a facility of the BSE.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(1) of the Act⁴ that an exchange be organized and have the capacity to be able to carry out the purposes of the Act; the requirement under Section 6(b)(3)⁵ that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs;

⁴ 15 U.S.C. 78f(b)(1).

⁵ 15 U.S.C. 78f(b)(3).

and the requirement under Section 6(b)(5)⁶ to have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act⁷ and subparagraph (f)(1) of Rule 19b-4 under the Act because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2004-10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without

change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2004-21 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).